

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9264 OF 2005

Smt.Kusum Rangnath Morade ...Petitioner.

Versus

Bapu Sitaram Thorat & Ors. ...Respondents.

Shri A.P.Kulkarni for the Petitioner.
Shri S.S.Kulkarni for Respondent No.1.

CORAM : S.C.DHARMADHIKARI,J.

DATE : 14th FEBRUARY, 2006.

P.C. :

1. Heard Shri Kulkarni - learned Counsel appearing for the petitioner. By this Petition under Article 227 of the Constitution of India, the petitioner challenges an order passed by the Joint Civil Judge, Junior Division, Daund dated 15th November, 2005 below Exh.44 in Regular Civil Suit No.55 of 2004.

2. The petitioner-original plaintiffs' application in the trial Court for appointment of Court Commissioner is rejected.

3. Shri Kulkarni appearing for the petitioner seeks leave to withdraw the application (Exh.44) made in the trial Court and in that light does not press this Petition.

4. In the light of the withdrawal of the application for appointment of Court Commissioner, the legality and validity of the order under challenge need not be gone into. It is always open for the petitioner to apply for the reliefs which have been claimed in the application in question, in case the petitioner demonstrates that, it is necessary to verify, whether the wells in question are part and parcel of the suit properties. Thus, the application for appointment of Court Commissioner can always be renewed after the petitioner leads his evidence. Needless to state that it would be always open for the respondent to oppose that such application is not maintainable.

(S.C.DHARMADHIKARI,J.)